

AWARD NO. 11
Case No. 11

Organization File No. C141126 PLR
Carrier File No. 15-02

PUBLIC LAW BOARD NO. 7460

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
)
TO)
)
DISPUTE) PADUCAH & LOUISVILLE RAILWAY

STATEMENT OF CLAIM:

1. The dismissal of Mr. P. Brasher for violation of Paducah & Louisville Railway, Inc. Operating Rules A(1), A(4), I, P&L Railway Workplace Violence Policy and P&L Railway Sexual or Other Unlawful Violations Policy in connection with the report that Mr. Brasher created a hostile work environment by engaging in violence in the workplace while employed and performing service was arbitrary, capricious and excessive.
2. As a consequence of the violation referenced in Part 1 above, Mr. P. Brasher shall be granted the remedy in accordance with Rule 30(g) of the Agreement.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated December 16, 2010, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

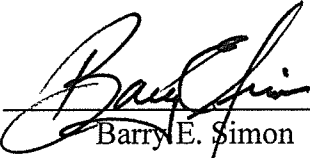
By letter dated October 27, 2014 Claimant, a Section Foreman in the Carrier's Maintenance of Way Department, was directed to attend a formal investigation at which he was charged with creating a hostile work environment by engaging in violence in the workplace. Also charged were

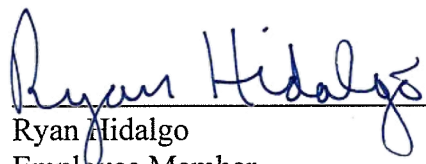
Trackmen A. J. Garnett and T. A. Donoho. Following the investigation, which was conducted on November 19, 2014, Claimant was dismissed from service.

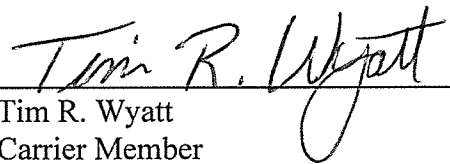
Our review of the record of the investigation shows that Claimant was involved in separate altercations with Mr. Garnett and Mr. Donoho. The first involved Mr. Donoho and arose when he parked in a parking space normally used by Claimant. When he had completed his work for the day, Mr. Donoho found that two of the tires on his truck were flat. Claimant arrived while Mr. Donoho was putting air in the tires and, according to Trackman Anthony Rupp, said, "Park there again motherfucker and see what happens." The conversation between the two employees escalated until Claimant chest bumped Mr. Donoho, at which point Mr. Rupp and Trackman Dustin Spresser physically restrained Claimant, who was reaching into his pocket where, according to Mr. Rupp, he was known to keep a knife. The second incident involved Claimant attempting to physically pull Mr. Garnett out of a truck that was backing out of the Maintenance of Way building and telling Mr. Garnett that he was going to "whoop my ass."

Based upon the record before us, we find that the Carrier had produced substantial evidence to support its charge against Claimant. Given the nature of Claimant's conduct, we cannot find that the discipline imposed was either arbitrary or excessive. The Carrier has an obligation to protect the safety of its employees, and the termination of an employee who acts in a threatening and aggressive manner toward his co-workers is a reasonable act on the part of the Carrier as a means for meeting that obligation. We find no basis for modifying the discipline imposed, notwithstanding Claimant's long tenure with the Carrier.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Ryan Hidalgo
Employee Member


Tim R. Wyatt
Carrier Member

Dated: September 7, 2016
Arlington Heights, Illinois